STATE OF MICHIGAN

COURT OF APPEALS

In re JACKSON, Minor

UNPUBLISHED
July 28, 2015

Nos. 325838 and 325839
Ingham Circuit Court
Family Division
LC No. 14-001407-NA

Before: O'CONNELL, P.J., and OWENS and M. J. KELLY, JJ.

PER CURIAM.

In Docket No. 325839, respondent-mother appeals by right the trial court's order terminating her parental rights to E.J. Respondent-father appeals by right the same order terminating his parental rights to the child in Docket No. 325838. The trial court terminated their parental rights under MCL 712A.19b(3)(g), (3)(i), and (3)(j). Because we conclude there were no errors warranting relief, we affirm in both dockets.

I. BASIC FACTS

Three days after E.J.'s birth, the Department petitioned the trial court to exercise jurisdiction over him under MCL 712A.2(b)(1) and (b)(2), and to terminate respondent-mother's parental rights. The Department alleged that respondent-mother had previously voluntarily released her rights to three children, and that her rights to a fourth child, P.J., whose biological father was respondent-father, were also terminated. Respondent-father's parental rights to P.J. were eventually also terminated. The Department recited respondents' lengthy criminal histories and alleged that during the five months prior to giving birth to E.J., respondent-mother tested positive for ethanol four times, cannabinoids five times, and cocaine and barbiturates three times.[1] The petition reported that when respondent-mother gave birth to E.J., she had neither housing nor supplies to care for the baby.

[1] The Department also alleged that respondent-mother tested positive for opiates twice and benzodiazepines once, but a worker from Sparrow Hospital testified that these results came from her medical care.

The hearing referee found probable cause that one or more of the allegations in the petition were true, that it was contrary to the child's welfare for him to remain in respondent-mother's care, and that reasonable efforts had been made to prevent his removal. Upon the referee's recommendation, the trial court authorized the petition, placed E.J. with the Department, granted respondent-mother supervised parenting time, and ordered the Department to undertake immediate efforts to establish the child's paternity. DNA testing established that respondent-father was E.J.'s biological father. Respondent-father signed an affidavit of parentage and the trial court appointed him separate representation.

The Department asked the trial court to terminate both respondents' parental rights at the initial disposition, MCR 3.977(E), which the trial court held approximately 10 weeks after the original petition. During the adjudicative phase of the trial, Lauren O'Connor, who is an investigator with Child Protective Services, testified about respondent-mother's long history of alcohol, marijuana, and cocaine abuse and stated that she continued to abuse those substances while pregnant with E.J. O'Connor also testified that the family court had previously terminated both respondents' parental rights to a child. She emphasized that homelessness, substance abuse, and lack of financial resources were concerns during the previous terminations, and that they continued to be barriers to reunification. She reported that when E.J. was born, respondents were unemployed, without adequate housing, and lacked baby supplies.

Regarding respondent-father, O'Connor testified that he told her he had housing and that he did not have a substance abuse problem. She admitted that she made no effort to verify his residence and did not refer him to drug testing because his paternity had not been established at the time of the original petition. O'Connor also admitted that respondent-father had baby supplies and lived with his aunt in a home that had been investigated and deemed adequate. Nevertheless, O'Connor opined that he would be unable to care for E.J. because there was no proof that he had rectified his substance abuse problem. The trial court took jurisdiction of the child and proceeded to the dispositional phase.

During the dispositional phase, O'Connor reiterated her previous testimony regarding respondent-mother's history of substance abuse, but admitted under cross-examination that respondent-mother participated in a detoxification program in early December 2014, and checked herself into Glass House (a residential treatment program) in middle-to-late December. Regarding respondent-father, O'Connor testified that he also had a history of substance abuse. Although she admitted that he was making progress toward removing the barriers to reunification with E.J., she stressed that at the time of the initial petition, respondent-father had neither housing nor employment.

Respondent-mother testified that she completed a detoxification program in early December, and started attending Alcoholics Anonymous and Narcotics Anonymous meetings. She expected to receive a Section 8 housing voucher the following month, and anticipated having adequate housing after her release from Glass House. She explained that she missed three parenting-time sessions because she was in the hospital and two more when E.J. had been taken to Ann Arbor for hearing tests. She insisted that her current efforts to overcome her substance abuse problem differed from previous efforts, and expressed confidence that she could care for E.J.

Respondent-father admitted that he had a substance abuse problem in the past, but testified to being drug-free for at least a year, and said he would have participated in drug screens had the Department required him to do so. He said he had baby supplies and adequate housing and that he was actively seeking employment. He attested to the support and motivation he received from his aunt and the church community he had joined. When asked if he had lived anywhere longer than six months since his rights were terminated in 2010, he replied that he and respondent-mother had lived in Paw Paw for "like six, seven months together."

Jasmine Hudson, a foster-care worker with Lutheran Social Services of Michigan, testified that respondents participated in only five of 14 one-hour parenting-time opportunities and that although the visits went well, and respondents showed love and affection toward E.J., there was little interaction or bonding with the child, who slept most of the time. Hudson acknowledged that respondent-mother was addressing her substance abuse issues through a residential treatment program, that respondent-father currently lived with his aunt in a home deemed appropriate, and that the home had food, bottles, diapers, and baby clothes for E.J. Hudson acknowledged that he was making progress on remedying his homelessness and lack of financial resources, conceded that nothing had been done to get a sense of whether he currently was using drugs, and agreed that she could better assess respondent-father's parenting skills if he had more parenting-time visits apart from respondent-mother. Nevertheless, Hudson maintained that there was no reasonable expectation that either parent would be able to provide care and custody for E.J. within a reasonable time given E.J.'s age. Hudson believed that termination of respondents' parental rights was in E.J.'s best interests.

The trial court found that the Department had established by clear and convincing evidence grounds for terminating both respondents' parental rights clear under MCL 712A.19b(3)(g), (i), and (j). It also found that termination was in the best interest of E.J. Accordingly, it entered an order terminating both respondents' parental rights.

Respondents now appeal in this Court.

II. ANALYSIS

A. STANDARDS OF REVIEW

This Court reviews for clear error both a trial court's finding that a ground for termination has been established by clear and convincing evidence and its best interests finding. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009) (opinion by CORRIGAN, J.). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

B. DOCKET NO. 325839

Respondent-mother argues that termination under MCL 712A.19b(3)(g) was premature because she was taking steps to overcome her substance abuse and to obtain suitable housing. Under § 19b(3)(g), a court may terminate a parent's parental rights if it finds by clear and convincing evidence that the parent, "without regard to intent, fails to provide proper care or

custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." Evidence is clear and convincing when it produces "a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the fact-finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009) (quotation marks and citation omitted).

In this case, the Department presented clear and convincing evidence that respondent-mother struggles with substance abuse and that her substance abuse adversely affects her children. Respondent-mother admitted that she previously released her rights to three other children because she was struggling with substance abuse. She also admitted that she was mentally incapable of caring for them. And, although she completed a 14-day detoxification program in 2007, P.J. tested positive for cocaine when he was born later that year. Respondent-mother's relapse after the detoxification program and her unsuccessful attempt to remove the barriers to reunification with P.J. illustrate the entrenched nature of her substance abuse issues. In her own words, "It has been a struggle for me for a long time." Her continued abuse of alcohol, marijuana, and cocaine during her pregnancy with E.J. speaks to this very point.

The evidence also established the struggles respondent-mother faces in obtaining a degree of stability in her life. Nothing in the record indicated that respondent-mother had lived anywhere for longer than six or seven months since her previous termination. Except for the time she spent at Sparrow Hospital and Glass House, she lived in shelters during the pendency of this case. She anticipated obtaining a Section 8 voucher, but even if she did, she still had to find adequate Section 8 housing. Respondent-mother did not have a job when she lived in Kalamazoo or when she was admitted into Sparrow Hospital. She made no mention at the termination hearing of her potential for employment or access to financial resources.

Deferring to the trial court's special opportunity to judge the credibility of the witnesses who appear before it, *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989), we conclude that the court did not clearly err when it found that the Department had established by clear and convincing evidence grounds to terminate respondent's parental rights under § 19b(3)(g). We also conclude that the trial court did not clearly err when it found that termination was in the child's best interests. See MCL 712A.19b(5). Because only one ground is required for termination, *In re Powers Minor*, 244 Mich App 111, 119; 624 NW2d 472 (2000), we will not consider respondent-mother's challenges to the court's findings with respect to the other statutory grounds. See *In re Utrera*, 281 Mich App 1, 24; 761 NW2d 253 (2008).

C. DOCKET NO. 325838

Respondent-father argues that the trial court clearly erred when it found that the Department had established by clear and convincing evidence grounds for termination under MCL 712A.19b(3)(g), (i), and (j), and clearly erred when it found that termination of his parental rights was in the child's best interests under MCL 712A.19b(5).

With regard to the grounds asserted under MCL 712A.19b(3)(g) and (j), the Department had the burden to establish by clear and convincing evidence that respondent-father currently had a substance abuse problem or other issues that would prevent him from being able to adequately care for the child. See MCR 3.977(A)(3). O'Connor testified that the Department did not have respondent-father screened for drug use and respondent-father testified that he had been drug-free for a year. There was insufficient evidence from which to find that respondent-father continued to struggle with substance abuse. In addition, O'Connor and Hudson testified that respondent-father had adequate housing and baby supplies. Accordingly, on this record, the trial court clearly erred when it found that the Department had established grounds for termination under § 19b(3)(g) and (j).

The trial court also clearly erred to the extent that it found that the Department had established grounds for terminating respondent-father's parental rights under § 19b(3)(i). The Department failed to present any evidence that respondent-father's previous termination was for serious or chronic neglect or physical or sexual abuse. See MCL 712A.19b(3)(i). Nevertheless, it was undisputed that a court had terminated respondent-father's parental rights to another child and that fact would be sufficient to establish grounds for termination under MCL 712A.19b(3)(l). Even though the Department did not assert MCL 712A.19b(3)(l) as a ground for termination in its petition, because the ground for termination stated under MCL 712A.19b(3)(i) includes the ground for termination stated under MCL 712A.19b(3)(l), respondent-father was on notice of the proofs that he would have to present to overcome termination under either ground. See *In re Perry*, 193 Mich App 648, 651; 484 NW2d 768 (1992). Therefore, the trial court's erroneous finding that respondent-father's previous termination involved serious and chronic neglect or physical or sexual abuse was harmless. *Id.*

The trial court also did not clearly err when it found that termination of respondent-father's parental rights was in the child's best interests. There was evidence that the bond between respondent-father and the child was not strong. The child was 10-weeks old at the time of the termination and had spent most of his time with the foster parents. Respondent-father missed more than half of his allotted parenting time. In addition, respondent-father's testimony that he had lived only six or seven months in one place during the last four years evidences a pattern of instability and, coupled with the fact of his unemployment and the effect of his lengthy criminal history, raises questions about how long he will stay in his current home. The record also shows that respondent-father continued to be involved with respondent-mother, despite her serious substance abuse and domestic violence outbursts and, according to his testimony, the fact that continued association with her contributed to termination of his parental rights to the other child. In considering what is in a child's best interests, "a parent's interest in the care and custody of his or her child yields to the state's interest in the protection of the child." *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009). In light of respondent-father's past history of housing instability, his continued association with respondent-mother, his lack of employment, and the practical effects of his criminal history, the trial court's finding concerning the child's best interests was not clearly erroneous.

Because only one ground is required for termination, *In re Powers Minor*, 244 Mich App at 119, and the trial court did not clearly err when it found that termination was in the child's best interests, we conclude that there was no error warranting relief in Docket No. 325838.

III. CONCLUSION

The trial court did not clearly err when it found that the Department had established by clear and convincing evidence at least one applicable ground for terminating both respondents' parental rights. It also did not err when it found that termination of respondents' parental rights was in the child's best interests. Because there were no errors warranting relief, we affirm in both dockets.

Affirmed.

/s/ Peter D. O'Connell
/s/ Donald S. Owens
/s/ Michael J. Kelly